IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

WRIT PETITION NO.4760 OF 2000

Yashwantrao Chavan Shetkari
Sahakari Soot Girni Maryadit
Tung, Taluka-Miraj,
Dist.: Sangli ... Petitioner

V/s.

1. The State of Maharashtra

2. The Inspector General of
Registration and Controller of
Stamps, Maharashtra State, Pune

3. The Sub-Registrar and
Administrative Officer
Mumbai, Ground Floor, Old
Customs House, Fort, Mumbai - 23

4. Deputy Superintedant of Stamps
Mumbai M.S. Gen.Stamp Office, Nagar
Bhavan, Fort, Mumbai ... Respondents

Mr.T.S. Ingale for Petitioner
Mr.S.R. Nargolkar, AGP, for Respondent Nos.1 to 4

CORAM: **V.G. PALSHIKAR &**
SMT.NISHITA MHATRE, JJ.

DATED: **JANUARY 11, 2005**

ORAL JUDGMENT (PER NISHITA MHATRE, J.):

. The Petition challenges the notices issued to the Petitioner by the Respondents for payment of stamp duty on the mortgage deed dated 8.7.1993, contrary to the Government order dated 19.3.1990 for remission of stamp duty.

2. The Petitioner which is a cooperative society registered under the Maharashtra Cooperative Societies Act established a cooperative spinning mill in Taluka Miraj, Sangli District. The Petitioner required funds for purchasing land, buildings and machinery to start a new industrial unit. The Maharashtra State Cooperative Bank Limited agreed to advance a sum of Rs.437 lacs as medium term loan to establish the industrial unit. The Petitioner executed an indenture of mortgage of their properties, both immovable and movable, to secure the repayment of the loan. The mortgage deed was lodged on 5.7.1993 with the Collector, Mumbai for determination of the stamp duty. In exercise of his powers under section 32(2) of the Bombay Stamp Act, 1958, the Collector exempted the mortgage deed from stamp duty in accordance with the Government order for remission dated 19.3.1990. The order of the Government dated 19.3.1990 remitted w.e.f. 1.10.1988, the stamp duty chargeable under the Bombay Stamp Duty Act on the mortgage deeds executed by any person for securing repayment of money advanced to him by way of loan by any financial agency specified in Schedule I thereto. Such a loan was required to be availed of for purchasing fixed assets such as machinery, lands and buildings for the purpose of starting any new industrial unit in Talukas specified at column 3 and in the Districts listed in column 2 of the

Schedule.

3. After about seven years, that is, on 23.6.2000, Respondent No.3 called upon the Petitioner to pay a sum of Rs.17,48,000/- and Rs.5000/- towards the stamp duty and registration charges respectively on the mortgage deed lodged on 5.7.1993. This notice was issued as directed by the auditor of the respondents for recovery of the amount from the Petitioner. By another letter of 25.6.2000, Respondent No.2 informed the Petitioner that the exemption granted from the payment of stamp duty on the mortgage deed was erroneous and was being withdrawn pursuant to the Government order dated 24.3.1980. The Petitioner was called upon to pay the stamp duty and the registration fee within eight days in order to avoid action being taken against it under section 46 of the Bombay Stamp Act. The reply of the Petitioner dated 30.6.2000 to the effect that the exemption was granted in accordance with the government order dated 19.3.1990 for remission of stamp duty went unheeded. A further letter was issued on 20.7.2000 by Respondent No.4, Deputy Superintendent of Stamps, Mumbai calling upon the Petitioner to pay the stamp duty within a period of eight days.

4. Aggrieved by these notices issued, the Petitioner approached this Court under Article 226 of

the Constitution.

5. A bare perusal of the Government order issued on 19.3.1990 under the Bombay Stamp Act discloses that the stamp duty chargeable under the Act in respect of a mortgage deed executed for the purposes of securing repayment of money advanced by way of loan by any financial agency specified in Schedule I for the purposes of purchasing fixed assets for starting a new industrial unit in the specified Talukas of the specified Districts was exempted.

6. Admittedly, the loan was taken from the Maharashtra State Cooperative Bank by the Petitioner. Item 8 in Schedule II stipulates that the loans taken for the purposes of setting up units in the entire Sangli District between 1.10.1988 and 30.9.1993 were covered. Admittedly, the new industrial unit of the Petitioner was established in Sangli District and the loan for purchase of fixed assets for the new industrial unit was taken between 1.10.1988 and 30.9.1993. The deed of mortgage was lodged with the Collector, Mumbai on 5.7.1993 for determination of the stamp duty payable. Therefore, there is no doubt that the Petitioner would be entitled to the exemption available under the Government order dated 19.3.1990. This exemption was

granted under section 32(2) of the Bombay Stamp Act by the Collector when the document was lodged.

7. Section 53A stipulates that the Collector's decision taken under section 32(2) can be revised within a period of six years from the date of the certificate of the Collector issued under section 32. The revision is sought to be made by issuing letters in the year 2000, admittedly, more than six years after the certificate was issued on 5.7.1993. Therefore, the powers sought to be exercised under section 53A by the respondents cannot be invoked beyond the period prescribed.

8. The letters dated 23.6.2000, 25.6.2000 and 20.7.2000 issued by the Respondents are quashed and set aside. Rule made absolute accordingly. No order as to costs.